Supreme Court, U.S.
FILED
05110400 14 2005
OFFICE OF THE CLERK

No.

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

---

Logie W. Talley,

*Petitioner,*

**v.**

The Housing Authority of Columbus, Georgia

*Respondent.*

---

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Eleventh Circuit

---

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## INTRODUCTORY STATEMENT

The undisputed facts in this case establish that the Housing Authority of Columbus, Georgia, the respondent, in 1994 brought a condemnation action in the Superior Court of Muscogee County State of Georgia regarding the property owned by the petitioner, Logie W. Talley. The property was to be used for an urban renewal project. Judge E. Mullins Whisnat awarded condemnation in favor of the respondent. As was stated by the United States District Court for the Middle District of Georgia Columbus Division and the United State Court of Appeals for the Eleventh Circuit, the condemned property was to be used for an urban development renewal project authorized under Georgia Law. The respondent seized the property in question for more than 4 years and never used the property for anything, not even the urban development renewal project for which it was condemned. The respondent refused to return the subject property back to the petitioner. The petitioner was never given the opportunity to develop his own property by the Housing Authority of Columbus, Georgia or the City of Columbus, Georgia in accordance with the proposed plan.

## QUESTIONS PRESENTED FOR REVIEW

1. Why would the United States District Court for the Middle District of Georgia Columbus Division and the United States Court of Appeals for the Eleventh Circuit ignore Georgia's own State law that authorizes urban renewal projects? This law guarantees that the condemnee must be permitted to develop his own land in accordance with the proposed plan, if he so desires and if he has the resources to do so.

2. Why would the United States Court of Appeals for the Eleventh Circuit only address the jurisdictional basis for the district court's decision when it was clear that the respondent had far exceeded the power granted to it by the Georgia legislature?

3. How could the final judgment of the Superior Court of Muscog County State of Georgia in 1994 authorize the action taken by the respondent against the petitioner after the respondent condemned tl petitioner's private property?

4. How could the action taken by the respondent against the petitioner not have violated the petitioner's constitutional rights as well as violated Georgia's own State laws?

5. How could the petitioner receive a fair trial in the lower courts when the lower courts would only address the condemnation proceeding in 1994?

6. Why would a lower court allow the respondent to compare this case to the New London Connecticut Case when there is no comparison?

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**Cases**

*Johnson v. County*,
103 Ga. App. 873, 1121 S.E. 2d. 54 (1961) . . . . . 2

*McCord v. Housing Authority of the City of Atlanta*,
246 Ga. 547.272. S.E. 2d 247 (1980) . . . . . 2

*Nary v. Dean*, 32 F3rd 1521, 1524 (11th Cir. 1994) . . . . . .2

## Opinions and Orders Below

On October 10, 2004, Judge Clay D. Land of the United States District Court for the Middle District of Georgia Columbus Division granted summary judgment in favor of respondent. The court's opinion and order can be found in the appendix.

On September 23, 2005, a panel of the United States Courts of Appeals ruled that the district court committed no reversible error in concluding that it lacked subject matter jurisdiction. The panel stated that they addressed only the jurisdictional basis for the district court's decision. The court order incorporating this decision can be found in the appendix.

In September 2005, the judges of the United States Court of Appeals for the Eleventh Circuit denied petitioner's request for a rehearing of decision, and this order can be found in the appendix.

## JURISDICTION

As Judge Land pointed out in his Order of Judgment, the petitioner's private property was condemned to be used for an urban renewal project authorized under Georgia law. However, Judge Land did not mention the respondent's seizure of the subject property for more than 4 years nor the respondent's failure to use the property for an urban renewal project for which he had condemned the property for. The respondent refused to return the subject property to the petitioner. The respondent either sold the subject property to a private citizen for a profit of $42,800 or transferred the property to the city of Columbus, Georgia where it could be sold to a private citizen. This action by the respondent is clearly a violation of the petitioner's constitutional rights as well as an unauthorized use of Georgia law authorizing urban renewal projects.

The respondent was created by the State itself and given condemnation powers. The undisputed facts in this case establish that the respondent has far exceeded the power granted to him by the Georgia legislature. The United States District Court for the Middle District of Georgia Columbus Division clearly had subject matter jurisdiction over the respondent, who has misused condemnation powers, given to him by the State itself, to violate state and federal laws and the petitioner's constitutional rights.

Even if the Rooker-Feldman Doctrine applied in this case which it does not, it is clear that the petitioner does not seek to set aside a final state court judgment in this case. A final judgment is not and could not have been a part of the federal complaint filed by the appellant. It is also clear that the respondent condemned the petitioner's private property to be used for an urban renewal project authorized under Georgia law. The respondent never used the subject property for anything but realty property to be sold to a private citizen for profit of $42,800 or to be transferred to the city of Columbus where it could be sold to a private citizen. It is a fact that this action by the respondent was not part of the Superior Court of Muscogee County State of Georgia's final judgment. The petitioner surely has presented some independent claim.

The Rooker-Feldman doctrine asks,

> Is the federal plaintiff seeking to set aside a state judgment or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? If the former, then the district court lacks jurisdiction. If the latter, then there is jurisdiction and the state law determines whether the defendant prevails under principles of conclusion.
> *Nary v. Dean,* 32 F3rd 1521, 1524 (11th Cir. 1994)

The complaint submitted herein does not seek to set aside a condemnation judgment entered in the Superior Court of Muscogee County State of Georgia in 1994 nor 1997. There is no basis for the District Court to have dismissed this case for lack of subject matter jurisdiction. The petitioner respectfully prays that such dismissal be overturned.

## CONSTITUTIONAL PROVISIONS

> The right of the state to obtain private property for the public purpose of urban redevelopment is qualified by the requirement that the property owner must be permitted to develop his land himself in accordance with the proposed plan, if he so desires and if he has the resources to do so. McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980).

> Since condemnor has no rights except those expressly granted to it by statute, and those rights can be exercised only, when every prerequisite to their exercise has been fully met. Johnson v. County, 103 Ga. App. 873, 1121 SE. 2d. 54 (1961).

## STATEMENT OF THE CASE

The respondent stated in federal court that he seized the subject property for more than 4 years and transferred the property to the city of Columbus, Georgia, and the city of Columbus, Georgia sold

the subject property for a sum of $42,800.00 to a private citizen. The fact is it makes no difference after the respondent seized the subject property for more than 4 years whether the respondent sold the subject property to a private citizen for a profit of $42,800 or transferred the subject property to the city of Columbus, Georgia, where it could be sold to a private citizen. The respondent's actions were clearly a violation of the plaintiff's constitutional rights as well as an unauthorized use of Georgia law, authorizing urban renewal projects. The Georgia Supreme Court declared the 1946 Urban Redevelopment law as unconstitutional to the extent that it permits the condemnation of property for the purpose of selling it to private enterprises for private use.

The Housing Authority of Columbus, Georgia, the respondent, made the following admittances in the United States Federal Court for the Middle District of Georgia Columbus Division.

1) The Housing Authority took the petitioner's private property in 1994, because it needed the property for public use. The Housing Authority, the respondent would not have taken the petitioner's private property without a finding of public necessity.
2) In 1994, the Housing Authority of Columbus, Georgia rejected the petitioner's appeal to get his property back.
3) In 1997, the respondent once again rejected the petitioner's motion to set aside, and this rejection prevented the petitioner from retrieving his private property.

Why are these admittances not evidence of a violation of the petitioner's 4th, 5th, and 14th amendment rights, the U.S. Constitution, the state constitution, and eminent domain laws? Eminent domain laws guarantee that nothing but a public necessity can justify the taking of private property for public use.

## Statement of Reason for Granting the Writ

The petitioner has presented to the United States Court of Appeals for the Eleventh Circuit and the United States District Court for the Middle District of Georgia Columbus Division with undisputed facts that the respondent used his condemnation powers granted to him by the state itself to condemn the petitioner's private property for an urban renewal. Project authorize under Georgia law for public use. The Georgia Supreme Court has held that the right f a state to obtain private property for public purpose of redevelopment is qualified by the requirement that the property owner must be permitted to develop his land himself in accordance with the proposed plan, if he so desires and if he has the resources to do so.

The petitioner was not given any opportunity to develop his own property by the respondent, which is a requirement of Georgia state law authorizing urban renewal redevelopment projects. This Georgia state law was ignored by the respondent, as well as the United States Court of Appeals, and the Untied States District Court for the Middle District of Georgia Columbus Division.

The Supreme Court of the United States should grant writ of certiorari based on the fact that the Georgia state law which authorized urban renewal projects was ignored by the United State Court of Appeals for the Eleventh Circuit and the United States District Court for the Middle district of Georgia Columbus Division. This same Georgia state law was violated and ignored by the respondent as well, which inherently violated the petitioner's constitutional rights. No one should be above the law.

## CONCLUSION

The petitioner respectfully requests that this court grant the writ of certiorari not just because it is the right thing to do but because of the unusual and uncalled for treatment against the petitioner at the hands of the respondent, who has been created by the state itself and given state powers.

Respectfully submitted,

Logie W. Talley

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

LOGIE W. TALLEY, *

Plaintiff *

Vs. *

THE HOUSING AUTHORITY *
OF COLUMBUS, GEORGIA,
*

Defendant *

Filed
U.S. District Court
Middle Georgia
04 AUG 10 AM 8:21

Case Number 4:04-CV-61-1

Civil Order Book 30, Page 2804

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JUDGMENT

Pursuant to this Court's Order dated August 9, 2004, and for the reasons stated therein, JUDGMENT is hereby rendered in favor of Defendant. Plaintiff shall recover nothing of Defendant. Defendant shall also recover its costs of this action.

This 10th day of August, 2004.

Gregory J. Leonard, Clerk
"s/Gregory J. Leonard"

Timothy L. Frost, Deputy Clerk

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE GEORGIA
04 AUG -9 AM 10:02
"s/Elizabeth S. Long"
DEPUTY CLERK

LOGIE W. TALLEY, *

Plaintiff *

Vs. *

THE HOUSING AUTHORITY * CASE NO. 4:04-CV-61-1 (CDL)
OF COLUMBUS, GEORGIA, *

Defendant *

ORDER

The Court presently has pending before it Defendant's Motion for Summary Judgment and Plaintiff's cross-Motion for Summary Judgment. For the following reasons, the Court grants Defendant's Motion for Summary Judgment and denies Plaintiff's motion.

FACTS

The above captioned lawsuit arises from Defendant's condemnation of Plaintiff's property in 1994. Plaintiff contends that Defendant had no "public necessity" for condemning Plaintiff's

property, and his constitutional rights. Plaintiff seeks a return of the condemned property, damages for emotional distress, and an assessment of punitive damages against Defendant. Defendant contends that Plaintiff had an opportunity to contest the condemnation in the state court proceedings and is now precluded from re-litigating issues in this Court that were decided in those proceedings.

In 1994, Defendant brought a condemnation action in the Superior Court of Muscogee County, Georgia regarding property owned by Plaintiff and other condemnees. Plaintiff was served as one of the condemnees in that action. The condemned property was to be used for an urban renewal project authorized under Georgia law. A special master was appointed pursuant to Georgia law, and on June 24, 1994, awarded the condemnees the sum of $17,500.00 as the value of the property. The special master's award was made the order and judgment of the Superior Court of Muscogee County, Georgia, on August 1, 1994, and the proceeds were deposited with the clerk of court. Plaintiff attempted to appeal that judgment, but his appeal was dismissed as untimely. Subsequently, on June 20, 1997, Plaintiff filed a motion in the state court condemnation action

to set aside the August 1, 1994 judgment. Plaintiff's motion was denied.

Plaintiff filed the above captioned Complaint in this Court on May 21, 2004, almost ten years after the initiation of the condemnation actions. Plaintiff claims that the 1994 condemnation was unlawful and violated his constitutional rights. Plaintiff specifically complains that Defendant condemned his private property without any public necessity for doing so. In support of this argument, Plaintiff alleges that the Defendant sold the property in question on December 3, 1999 to private citizens who are using the property for private purposes.

DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c). The undisputed facts in this case establish that Plaintiff seeks to re-litigate in this federal court the same exact issues that were involved in the condemnation action giving rise to the judgment in the Superior

Court of Muscogee County, Georgia. Plaintiff cannot proceed in this Court for two reasons. First, this Court lacks subject matter jurisdiction of this case under the *Rooker-Feldman* doctrine. Second, even if this Court had jurisdiction over the subject matter of this case, Plaintiff's claims are precluded by *res judicata* principles.

The essence of the *Rooker-Feldman* doctrine is that "a United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in the United States Supreme Court." *Narey v. Dean*, 32 F. 3d 1521, 1524 (11th Cir. 1994) (quoting *Dist. Of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983)) ; see also *Wood v. Orange County*, 715 F. 2d 1543, 1545-57 (11th Cir. 1983) (discussing *Rooker* and *Feldman* decisions). Although the *Rooker-Feldman* and *res judicata* doctrines are related, they are distinct. As explained by the Eleventh Circuit:

> The *Rooker-Feldman* doctrine asks: is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? If the former, then the district court lacks jurisdiction; if the latter, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.

*Narey*, 32 F. 3d at 1525.
denied.

Plaintiff filed the above captioned Complaint in this Court on May 21, 2004, almost ten years after the initiation of the condemnation actions. Plaintiff claims that the 1994 condemnation [illegible] subject matter jurisdiction.[1]

Even if the Court had subject matter jurisdiction over this case, it is clear that Plaintiff would be precluded from litigating the issues that he seeks to litigate in this case. In resolving issues of claim and issue preclusion, this Court must apply Georgia law. See Matsushita Elec. Indus. Co., Ltd. V. Epstein, 516 U.S. 367, 375 (1996); see also 28 U.S.C. § 1738. Under Georgia law, "[a] judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside." O.C.G.A. § 9-12-40. In the present case. Plaintiff clearly put in issue in the state court action his position that Defendant did not have the legal authority to condemn his property. Moreover, even if he did not present that precise issue in the state

court action, he certainly had the opportunity to make that argument in those proceedings. Accordingly, he is precluded from asserting those claims in this federal action.[1]

CONCLUSION

It is clear that Defendant is entitled to judgment as a matter of law. Accordingly, Defendant's Motion for Summary Judgment is granted, and Plaintiff's Motion for Summary Judgment is denied.

IT IS SO ORDERED, this 9th day of August, 2004.

"s/Clay D. Land"
Clay D. Land
UNITED STATES DISTRICT JUDGE

[1] The Court recognizes that the Defendant did not assert lack of subject matter jurisdiction in support of its Motion for Summary Judgment. However, the federal courts always have the authority to determine whether the matters that are before them are subject to their jurisdiction.

**United States Court of Appeals**
For the Eleventh Circuit

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No. 04-14703

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District Court Docket No.
04-00061-CV-1-CDL-4

LOGIE W. TALLEY,

Plaintiff-Appellant,

Versus

THE HOUSING AUTHORITY
OF COLUMBUS, GEORGIA,

Defendant-Appellee.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
May 16, 2005, 3:20 PM
THOMAS K. KAHN
CLERK

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Appeal from the United States District Court
For the Middle District of Georgia

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JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: May 16, 2005
For the Court: Thomas K. Kahn, Clerk
By: Gilman, Nancy

APPENDIX B

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

**FILED**
**U.S. COURT OF APPEALS**
**ELEVENTH CIRCUIT**
**May 16, 2005**
**Thomas K. Kahn**
**Clerk**

---

No. 04-00061-CV-1-CDL-4
Non-Argument Calendar

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D.C. Docket No. 04-00061-CV-1-CDL-4

LOGIE W. TALLEY,

Plaintiff-Appellant,

Versus

THE HOUSING AUTHORITY
OF COLUMBUS, GEORGIA,

Defendant-Appellant.

---

Appeal from the United States District Court
For the Middle District of Georgia

---

**(May 16, 2005)**

Before EDMONDSON, Chief Judge, BIRCH and BARKETT,

Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Logie W. Talley, appearing pro se, appeals the district court's grant of summary judgment to Defendant-Appellee, the Housing Authority of Columbus, Georgia ("Housing Authority"). Talley brought a section 1983 suit, 42 U.S.C. § 1983, against the Housing Authority challenging a state court order that allowed the Housing Authority to seize his property. No reversible has been shown; we affirm.

Talley's section 1983 suit arises from the Housing Authority's condemnation of Talley's property in 1994. Talley alleged that the Housing Authority violated his Fourth, Fifth, and Fourteenth Amendment rights when it unlawfully asserted eminent domain over his private property. At the crux of Talley's claim is his assertion that no "public necessity" – the *sine qua non* of Georgia's power of eminent domain, see Williams v. LaGrange, 98 S.E.2d 617, 620 (Ga. 1957) – supported the condemnation of his property. Talley complains that the Housing Authority asserted eminent domain unlawfully over his property and later sold it to a private citizen at a profit. The Housing Authority moved for

summary judgment, asserting defenses of res judicata, estoppel, laches, and failure to state a claim.

The procedural facts are undisputed. Talley was served as one of several condemnees in a condemnation action in Superior Court of Muscogee County, Georgia. A special master was appointed who awarded $17,500 as the value of the property. The special master's award was made the order and judgment of the Superior Court of Muscogee County on 1 August 1994. Talley filed an appeal of that judgment, but the appeal was dismissed as untimely. Talley filed a motion to set aside the state court condemnation action on 20 June 1997; that motion was denied.

The district court concluded that it lacked subject matter jurisdiction under the Rooker-Feldman doctrine.[1] The Rooker-Feldman doctrine precludes federal courts – other than the United States Supreme Court – from reviewing final judgments of state courts. See Rooker v. Fidelity Trust Co., 44 S.Ct. 149, 150 (1923); [2]D.C. Court of Appeals v. Feldman, 103 S.Ct. 1303, 1311-15 (1983).

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[1]Although Housing Authority failed to raise the Rooker-Feldman doctrine or to challenge the district court's subject matter jurisdiction, a federal court has an independent obligation to satisfy itself that it has authority to hear a case before it proceeds to the merits. See University of S. Ala. V. American Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999). That the litigants do not question the court's jurisdiction is of no consequence; "the court must inquire into its jurisdictional

When four criteria are satisfied, Rooker-Feldman bars lower federal court jurisdiction: (1) the party in federal court is the same as the party in state court; (2) the prior state court ruling was a final judgment on the merits; (3) a reasonable opportunity existed for the party seeking a relief in federal court to have raised the federal claims in the state court proceeding; and (4) the issue advanced in federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment. Amos v. Glynn County Bd. Of Tax Assessors, 347 F. 3d 1249, 1265 n.11 (11th Cir. 2003).

We conclude, as did the district court, that the Rooker-Feldman criteria are satisfied. Talley and the Housing Authority were both parties to the state court condemnation action. That state court ended in a final judgment on the merits: Talley's property was condemned and the Housing Authority was granted fee simple title to the property. Talley had the opportunity to argue before the Special Master and on appeal to the Superior Court of Muscogee County the issue of public necessity and the claimed violation of his constitutional rights. And the petition for condemnation in the state

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basis sua sponte." Mirage Resorts, Inc. v. Quiet Nacelle Corp., 206 F.3d 1398, 1401 (11th Cir. 2000).

court proceedings stated that acquisition of the property was necessary to achieve the public purpose of urban redevelopment. See Williams, 98 S.E.2d at 620 ("[t]he underlying and fundamental principle upon which the right to take the property of any private citizen against his will ... by eminent domain is that it is necessary to do so for a public purpose."). So, the issue of whether the property was condemned for a public use necessarily was litigated in the state court condemnation action.

The district court committed no reversible error in concluding that it lacked subject matter jurisdiction to consider Talley's claims.[2]

AFFIRMED.[3]

[2] The district court concluded, alternatively, that principles of res judicata precluded consideration of Talley's claims. We address only the jurisdictional basis for the district court's decision.

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE ELEVENTH CIRCUIT**

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**No. 04-14703-FF**

---

LOGIE W. TALLEY,

Plaintiff-Appellant,

Versus

THE HOUSING AUTHORITY OF COLUMBUS, GEORGIA,

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
SEP 15, 2005
THOMAS K KAHN, CLERK

Defendant-Appellee.

---

On Appeal from the United States District Court for the Middle District of Georgia

---

BEFORE: EDMONDSON, Chief Judge, BIRCH and BARKETT, Circuit Judges.

PER CURIAM:

The petition (s) for rehearing filed by the Appellant, Logie W. Talley, is DENIED.

ENTERED FOR THE COURT:

"s/J.L. Edmondson"

Chief Justice

APPENDIX C

(2)

No. 051104

FILED
MAY 25 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

---

Logie W. Talley,

*Petitioner,*

**v.**

The Housing Authority of Columbus, Georgia

*Respondent.*

---

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Eleventh Circuit

---

# PETITION FOR REHEARING ON BEHALF OF Logie W. Talley, Petitioner

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May 25, 2006

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*Atlanta, GA v. Johnson*, S.E. 2d. 891. . . . . 4

*Kelo v. City of New London, U.S.*
1255C 2655, 162 LE 2d 439 . . . . . .4

## OPINION AND ORDERS BELOW

On April 5, 2006, the Court of Appeals of Georgia ruled that the respondent, the Housing Authority was not entitled to summary judgment on the claim of res judicata or collateral estoppel in 2003, but the respondent was entitled to summary judgment on other grounds. The court's opinion and orders can be found in the appendix.

PETITION FOR REHEARING ON BEHALF

OF LOGIE W. TALLEY, THE PETITIONER

The United States District Court for the District of Georgia Columbus Division and the United States Court of Appeals for the Eleventh Circuit has entered a decision in conflict with the decision of a state Court of Appeals and has decided an important federal question in away that conflicts with a decision by a State Court on the same exact important issue. The same important issue remains to be the lack of subject matter jurisdiction.

The United States District Court for the Middle District of Georgia Columbus Division stated in its order of Summary Judgment in favor of the Housing Authority of Columbus, Georgia, that the District Court lack subject matter jurisdiction of this case under the Rooker-Feldman doctrine.

The United States Court of Appeals for the Eleventh Circuit stated that "The District Court committed no reversible error in concluding that it lacked subject matter jurisdiction to consider Talley's claim".

The Court of Appeals of Georgia concluded that if the Housing Authority of Columbus, Georgia was entitled to summary judgment

on Talley's claim concerning the respondent's alleged abandonment of the public use and sale of the property to a private citizen for a substantial profit in 1999, it must be on some other grounds. That issue could not have been adjudicated, either in the initial condemnation proceeding in 1994 or in the motion to seta aside in 1997. The record shows that although this issue was raised by Talley in Federal Court, his Federal Suit was ultimately dismissed on jurisdictional grounds.

Therefore, the Housing Authority of Columbus, Georgia was not entitled to summary judgment of that claim on grounds of res judicata or collateral estoppel.

The Court of Appeals of Georgia concluded, however, that the respondent was indeed entitled to summary judgment on the claim on other grounds.

The Court of Appeals of Georgia stated the following.

> In accordance with the constitutional amendment, the General Assembly enacted the Urban Redevelopment Law in 1955, and because of the constitutional amendment, our Supreme Court reluctantly sustained the law's constitutionality.
> Kelo v. City of New London has ignited a national debate on the subject of government use of the power of eminent domain by taking private property from one person and selling it to another such person or private enterprise for

> urban redevelopment. Kelo found such taking to be permissible under the Fifth Amendment of the United States Constitution and left it to the states to enact more restrictive condemnation laws if they so chose.
>
> Georgia's nonrestrictive urban redevelopment law and its underlying constitutional authorization remain in place. Therefore, the Housing Authority of Columbus, Georgia was entitled to summary judgment on Talley's complaint that it abandoned any public use of the property and sold it to a private citizen for other uses, as such disposition of condemned property is authorized by the urban redevelopment law.

There was no claim or complaint by the petitioner that the Housing Authority of Columbus, Georgia abandoned any public use of the property and sold it to a private citizen for other uses. The undisputed facts in this case establish that the Housing Authority of Columbus, Georgia never used subject property for public use the fact is the subject property was never used for nothing by the Housing Authority of Columbus, Georgia before it was sold to a private citizen therefore there was nothing for the respondent to have abandoned.

There is no statutory authority under the laws of Georgia that would authorize the selling of public property, acquired by means of eminent domain, to be sold to a private citizen before the subject property space has fulfilled its public use.

According to Justice Whatt of the Georgia Supreme Court, public use may not be utilized as a guise for the acquisitioning of private property for the purpose of reselling the subject property to another private party for private use. Justice Whatt stated the following:

> We know of no cases in Georgia authorizing the power of eminent domain to be used in order to acquire private property for the purpose of being sold to another private person for his own private use. This is exactly what is sought to be done here. See Housing Authority of City of Atlanta, Ga. V. Johnson, S.E. 2d. 891.

As for the recent decision of the United States Supreme Court, the petitioner believes that the Court of Appeals of Georgia, the respondent, and some of the other courts in the State of Georgia have misinterpreted the decision of our United States Supreme Court in the case of Kelo v. City of New London. U.S. (125SC 2655, 162 LE 2d 439) (2005).

## CONCLUSION

The petitioner now provides to this court this significant new evidence not considered in this case on May 1, 2006. The fact that the Federal Court ultimately dismissed the petitioner's Federal Law Suit on jurisdictional grounds, and the United States Court of Appeals for the Eleventh Circuit ruled that the District Court

committed no reversible error in concluding that it lacked subject matter jurisdiction to consider Talley's claims.

The Court of Appeals of Georgia ruled that the Housing Authority of Columbus, Georgia was not entitled to summary judgment on that claim on grounds of res judicata or collateral estoppel in 2003. Therefore, the petitioner's claim was not considered by the state or federal courts because of the alleged lack of subject matter jurisdiction to hear his claim. Given all of the facts in this case, this case should have continued in federal court.

Thus, Logie W. Talley, the petitioner, respectfully requests of this court that a rehearing and the petition for Writ of Certiorari be granted.

Respectfully submitted,

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181 14th Street, N.E.
Atlanta, Georgia 30309
(404) 870 – 7373

Pro Se Petitioner
Logie W. Talley
3825 Masseyville Rd.
Macon, Georgia 31217
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## RULE 44.1 CERTIFICATE

Undersigned Pro Se. Petitioner, Logie W. Talley, hereby certifies that the foregoing petition for Rehearing in Logie W. Talley v. The Housing Authority of Columbus, Georgia. No. 051104 is presented in good faith and not for delay.

Logie W. Talley

Logie W. Talley

**FOURTH DIVISION**
**RUFFIN, C. J.**
**SMITH, P.J., PHIPPS, J.**

**NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.**
**(Court of Appeals Rules 4 and 37, September 5, 2002)**
**http://www.gaappeals.us/rules/**

**April 5, 2006**

## In the Court of Appeals of Georgia

A06A0393. TALLEY v. THE HOUSING AUTHORITY OF COLUMBUS, GEORGIA

PHIPPS, Judge.

In this suit by Logie Talley against the Housing Authority of Columbus, Georgia (HACG), the State Court of Muscogee County granted the HACG's motion for summary judgment. Talley appeals, raising issues concerning Georgian's Urban Redevelopment Law (URL)[1] and the recent decision of the Supreme Court of the United States in *Kelo v. City of New London*.[2] For reasons which follow, we affirm.

APPENDIX

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[1] OCGA § 36-61-1 et seq.

[2] ___ U.S. ___ (125 SC 2655, 161 LE2d 439) (2005).

In 1994, the HACG instituted an in rem condemnation proceeding against a subdivision lot and its owners, Talley and others. In that proceeding, the Superior Court of Muscogee County entered judgment conveying "full, complete and unencumbered fee simple title" to the property to the HACG upon payment into the court registry of $17,500 awarded by the special master to the property owners.

In 2003, Talley instituted this pro se action claiming that the HACG unlawfully took the property in 1994 and demanding its return. Talley also complains that in 1999 the HACG abandoned any public use of the property and sold it to a private citizen for $42,800. The HACG moved for summary judgment on grounds that the question of legality of the taking of Talley's property for a valid public purpose was decided adversely to him in tih initial condemnation action, in a motion to set aside the condemnation judgment filed by Talley and denied by the Superior Court of Muscogee County in 1997, and in a 42 USC § 1983 action filed by Talley against the HACG in federal district court in 2004. The state court granted the motion without explanation.

1. The HACG is certainly correct in its argument that Talley's challenge to the legality of the 1994 taking is barred by principles of res judicata and collateral estoppel.[3]

2. If, however, the HACG was entitled to summary judgment on Talley's claim concerning the HACG's alleged abandonment of the public use and sale of the property to a private citizen for a substantial profit in 1999,[4] it must be on some other ground; that issue could not have been adjudicated, either in the initial condemnation proceeding in 1994 or in the motion to set aside in 1997.[5] And the record shows that although that issue was raised by Talley in federal court, his federal suit was ultimately dismissed on jurisdictional grounds. Therefore, the HACG was not entitled to summary judgment on that claim on grounds of res judicata or collateral estoppel. We conclude, however, that the HACG was indeed entitled to summary judgment on the claim on other grounds. Where a summary judgment cannot be upheld for the reasons given by the trial court, we must decide whether the summary judgment

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[3] See generally *State v. Lejeune*, 277 Ga. 749, 756 (3) (594 SE2d 637) (2004).
[4] See Note: A Profit for the Taking: Sale of Condemned Property after Abandonment of the Proposed Public Use, 74 Wash. U.L.Q. 751 (1996).
[5] See *State v. Lejeune*, supra.

may be upheld on any other basis as a judgment that is right for any reason will be affirmed.[6]

The record shows that the condemnation proceeding was brought under the authority of Georgia's Urban Redevelopment Law (URL).[7] Enacted in 1955,[8] the URL authorizes Georgia municipalities and counties, either directly or through urban redevelopment agencies or housing authorities , to exercise the power of eminent domain for the acquisition and redevelopment of urban property which has been found to be a "slum area" as defined in the URL.[9] To effectuate redevelopment of condemned property, the URL authorizes a housing authority to sell, lease or otherwise transfer condemned property "for public use"; or for various specified private uses, i.e., "residential, recreational, commercial, industrial"; or for "other uses."[10]

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[6] *Precise v. City of Rossville*, 261 Fa. 210, 211 (3) (403 SE2d 47) (1991).
[7] OCGA § 36-61-1 et seq.
[8] Ga. L. 1955, pp. 354, 355, § 1.
[9] OCGA § § 36-61-1 through 36-61-17.
[10] OCGA § 36-61-10 (a); compare *Galloway v. Bd. Of Commissioners of Banks County*, 246 Ga. 472, 472 – 473 (271 SE2d 784) (1980) (implying that when condemnor abandons specific public use for which property was taken, it generally must devote the property to another "public" use).

The URL's precursor was the Redevelopment Law of 1946.[11] The 1946 law was found unconstitutional by the Supreme Court of Georgia in *Housing Authority of the City of Atlanta v. Johnson*,[12] on grounds that the power of eminent domain could not be used to acquire private property to sell to another private person for his own private use. Following the *Johnson* decision, however, the General Assembly adopted a resolution proposing that the Georgia Constitution be amended to authorize such use of the power of eminent domain.[13] The constitutional amendment was ratified by the voters, became part of the Georgia Constitution of 1945,[14] and has been carried forward into our 1976 and 1983 Constitutions.[15] In accordance with the constitutional amendment, the General Assembly enacted the URL in 1955 and, because of the constitutional amendment, our Supreme Court reluctantly sustained the law's constitutionality.[16]

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[11] Ga. L. 1946, pp. 157, 158, § 1.
[12] 209 Ga. 560 (74 SE2d 891) (1953).
[13] Ga. L. 1953, Nov.-Dec. Sess., p. 538.
[14] Art. XVI of the Ga. Const. of 1945.
[15] Art. IX, Sec. IV, Par. IV of the Ga. Const. of 1976; Art. IX, Sec. II, Paragraph VII (a) of the Ga. Const. of 1983; see *Nations v Downtown Development Auth. Or the City of Atlanta*, 255 Ga. 324, 329 (2) (d) (338 SE2d 240) (1986).
[16] *Bailey v. Housing Auth. Of City of Bainbridge*, Ga. 790 (107 SE2d 812) (1959); see also *Allen v. City Council of Augusta*, 215 Ga. 778 (113 SE2d 621) (1960).

*Kelo v. City of New London*[17] has ignited a national debate on the subject of government use of the power of eminent domain by taking private property from one person and selling it another such person or private enterprise for urban redevelopment. *Kelo* found such takings to be permissible under the Fifth Amendment of the United States Constitution and left it to the states to enact more restrictive condemnation laws if they so choose.

Georgia's nonrestrictive URL and its underlying constitutional authorization remain in place. Therefore, the HACG was entitled to summary judgment on Talley's complaint that it abandoned any "public use" of the property and sold it to a private citizen for " other uses," as such disposition of condemned property is authorized by the URL.[18]

*Judgment affirmed. Ruffin, C.J., and Smith, P.J., concur.*

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[17] Supra.

[18] Because the HACG was awarded indefeasible fee simple title to the property, it might also have sought dismissal of Talley's complaints concerning its post-condemnation activities based on lack of standing. See Sadtler v. City of Atlanta, 236 Ga. 396 (223 SE2d 819) (1976). In response, Talley might have argued that, as a citizen and taxpayer of the municipality, he has standing to challenge "ultra vires" actions of public officials. See Arneson v. Bd. Of Trustees of the Employees' Retirement Syst. Of Ga. , 227 Ga. 579, 580 (2) (361 SE2d 805) (1987); see also Galloway v. Bd. of Commissioners of Banks County, 246 GA. 472 (271 SE2d 784) (1980). In any event , the HACG did not challenge Talley's standing. We, therefore, do not decide the question.